

Board of Contract Appeals
General Services Administration
Washington, D.C. 20405

November 13, 2001

GSBCA 15637-TRAV, 15638-TRAV

In the Matters of VERA A. WOOD and MICHAEL C. RIERSON

Vera A. Wood, Clovis, NM, Claimant in GSBCA 15637-TRAV.

Michael C. Rierson, Cannon Air Force Base, NM, Claimant in GSBCA 15638-TRAV.

MaryLou Johnston, Senior Accountant/Deputy Financial Services Officer, 27 Comptroller Squadron (Air Combat Command), Cannon Air Force Base, NM, appearing for Department of the Air Force.

DANIELS, Board Judge (Chairman).

Vera A. Wood and Michael C. Rierson, civilian employees of the Department of the Air Force who work at Cannon Air Force Base (AFB), New Mexico, were part of a team ordered to conduct an environmental audit at Mountain Home AFB, Idaho, during June 2001. The Cannon AFB finance office has refused to reimburse them for the cost of airline tickets they purchased for the trip. The employees have asked us to review this determination.

Background

The travel orders for this trip said that Lieutenant Ashley Brown was "allowed to procur[e] transportation for listed members," including Ms. Wood and Mr. Rierson. The orders referenced several notations on their reverse side. One of those notations reads, "Government procured transportation directed; Report to the Traffic Management Office (TMO) as soon as possible. (Failure to procure transportation through TMO when directed will result in non-reimbursement of travel expenses.)"

Lt. Brown asked the Cannon AFB Scheduled Airline Ticket Office (SATO) to issue tickets for her and the two civilian employees who have brought these cases. SATO offered only tickets for travel beginning in Lubbock, Texas (one hundred miles southeast of Cannon AFB), with routing through Dallas/Fort Worth and Denver and ending in Boise, Idaho, an hour's drive from Mountain Home AFB. This trip would have taken about thirteen hours each way. SATO told Lt. Brown that the cost of the airfare for the trip was \$600 per person.

The prospective travelers considered the time excessive – especially because the trip required them to fly on a Saturday (usually a day off for them) and begin work on a Sunday morning. Lt. Brown therefore asked both her section commander and the Air Combat Command headquarters, which was funding the environmental audit and associated travel, for permission to buy tickets from another source. Permission was granted by both, with the section commander interpreting the orders' statement that Lt. Brown was "allowed to procur[e] transportation" to be explicit authority for the requested action.

Lt. Brown then purchased from a travel agent other than SATO tickets taking the travelers on a geographically more direct route from Clovis, New Mexico (near Cannon AFB), through Albuquerque and Phoenix to Boise. This trip took about eight hours each way, counting ground transportation from Boise to Mountain Home AFB. The cost of the airline tickets was \$587.50 per person. Ms. Wood and Mr. Rierson each reimbursed Lt. Brown for the cost of one ticket and sought repayment from the agency.

After the travelers returned to Cannon AFB, their orders were amended to delete the reference to the notation, "Government procured transportation directed; Report to the Traffic Management Office (TMO) as soon as possible. (Failure to procure transportation through TMO when directed will result in non-reimbursement of travel expenses.)"

Discussion

The parties to these cases have engaged in considerable discussion about whether Ms. Wood and Mr. Rierson were authorized to purchase airline tickets from a source other than the Cannon AFB SATO and/or on routes other than those for which a carrier had contracted with the Government to transport personnel at special city-pair fares. The parties also disagree as to whether it is reasonable for the agency to have insisted, in effect, that the employees begin and end their trip by driving one hundred miles to and from an airport from which a city-pair Government contract air route runs, rather than leave and depart from an airport near their duty station.

To resolve these disputes, we would have to decide the meaning of the travel orders' statement that Lt. Brown was "allowed to procur[e] transportation" for these employees; the impact of the putative authorizations by Lt. Brown's section commander and the Air Combat Command headquarters; and the effect of the post-trip deletion of the orders' referenced notation regarding use of a traffic management office. We would also have to analyze the merits of the arguments regarding the implicit agency demand that the employees begin and end their trip from Lubbock rather than Clovis.

Pertinent regulations provide for exceptions to the general rules requiring the use of agencies' travel management services and city-pair contract fares. 41 CFR 301-10.107 to -10.109, pt. 301-50 (2000); Joint Travel Regulations (JTR) C2001 (June 1, 2001), C2002 (June 1, 2001), C2207 (Feb. 1, 2001); see also Defense Transportation Regulation, Pt. I, Passenger Movement (DOD 4500.9-R), ¶¶ 103.A.2, 103.E.1 (Mar. 1998) (now at ¶ 103.B.2 (Sept. 2001)). If we were to find that authorization had been granted, we would have to determine whether, under these regulations, the grant was permissible. We would also have to decide whether Lubbock is so far away from Cannon AFB as to make use of the contract city-pair routes to and from that city's airport effectively impractical.

To decide the cases, however, we need not engage in any of this analysis. Even if we were to rule against Ms. Wood and Mr. Rierson on every one of the contested issues mentioned above, the employees would still prevail. The cases would become quite simple and very much like other cases we have already decided.

Congress has provided in statute that any Government employee, who travels on official business away from his designated post of duty and within the continental United States, is entitled to be reimbursed for his expenses of travel in an amount established by the Administrator of General Services. 5 U.S.C. § 5702(a)(1)(B) (2000). The Administrator has fulfilled his responsibilities under this statute by issuing the Federal Travel Regulation (FTR). Id. § 5707(a); 41 CFR pt. 300-1 (2000). The FTR provides that when an employee purchases an airline ticket for official travel from an unauthorized travel agent, or on a non-contract carrier when contract service is available and no exception applies, the employee is responsible only for additional costs that result from the unauthorized action. 41 CFR 301-10.109, -50.2. The agency is therefore responsible for the same costs it would have incurred if the employee had acted in accordance with his orders. Thus, even if we were to find that Ms. Wood and Mr. Rierson did not follow proper agency directions with regard to the purchase of their airline tickets, we would still direct the Air Force to reimburse them for the cost of the tickets, up to the amount the agency would have paid if the employees had followed instructions. Richard C. Mutzman, GSBCA 15533-TRAV, 01-2 BCA ¶ 31,538; Vivian E. Nichols, GSBCA 15493-TRAV, 01-1 BCA ¶ 31,366; Doris N. Lee, GSBCA 15451-TRAV, 01-1 BCA ¶ 31,279; Harold L. Reid, GSBCA 15249-TRAV, 00-2 BCA ¶ 31,134; Manuel F. Casiano, GSBCA 15304-TRAV, 00-2 BCA ¶ 31,004.

Ms. Wood and Mr. Rierson each paid \$587.50 for roundtrip airline tickets to travel to Mountain Home AFB. If they had purchased the tickets from the Cannon AFB SATO, they would each have paid \$600 for airline tickets.¹ In addition, they would have incurred expenses for travel in a privately-owned vehicle to and from Lubbock, and for parking at the Lubbock airport. See 41 CFR 301-10.107(c). These costs would have been \$69 for mileage (200 miles at 34.5 cents per mile, see 66 Fed. Reg. 6481 (Jan. 22, 2001)) and \$49 for parking (seven days at seven dollars per day). The total of \$118 would apparently have been shared among these employees and Lt. Brown, meaning that the trip to and from Lubbock would have cost each of the three \$37.33. Thus, the expense of travel, as intended by the agency, using city-pair contract fares and the Government's contract travel agent, would have been \$637.33 per person. Since the amount each employee paid is less than this, Ms. Wood and Mr. Rierson must each be paid the cost actually incurred for airline tickets.

The fact that the employees' travel orders warned (before amendment) that "[f]ailure to procure transportation through TMO when directed will result in non-reimbursement of travel expenses" has no impact on our decision. This notation is inconsistent with the

¹In an electronic mail message included in the record, an Air Force officer states that SATO quoted him a price of \$486 for roundtrip airline transportation between Lubbock and Boise. He does not say when this price was valid, however, and the agency does not suggest that it would have applied during the time in which Ms. Wood and Mr. Rierson were traveling to Mountain Home AFB. We accept as correct the figure of \$600 reported by Lt. Brown.

relevant FTR provision. The FTR is a "legislative rule" – a regulation issued under express authority from Congress, for the purpose of affecting individual rights and obligations by filling gaps left by a statute, after following the Administrative Procedure Act's notice and comment provisions. See National Organization of Veterans' Advocates, Inc. v. Secretary of Veterans Affairs, 260 F.3d 1365, 1375 (Fed. Cir. 2001); Paralyzed Veterans of America v. West, 138 F.3d 1434, 1436 (Fed. Cir. 1998); Lorrie L. Wood, GSBCA 13705-TRAV, 97-1 BCA ¶ 28,707 (1996). It therefore has controlling weight – the force of law – unless demonstrated to be arbitrary, capricious, or manifestly contrary to statute, which defect clearly does not plague the cited provisions. See Rite Aid Corp. v. United States, 255 F.3d 1357, 1359 (Fed. Cir. 2001). Because the notation is inconsistent with the FTR, it is an incorrect statement of the law and has no effect.

Similarly, the fact that the Defense Department's Joint Travel Regulations do not say anything about reimbursement for the cost of airline tickets purchased in an unauthorized way has no impact on our decision. The JTR contains a provision which reads as follows: "Authorization Not Stated. There may be circumstances when the FTR authorizes a discretionary travel and transportation entitlement but the JTR remains silent. A discretionary FTR authorization that is not addressed in the JTR is not implemented within DoD [the Department of Defense]." JTR C1001-D (Apr. 1, 2001). This provision does not apply to a situation like the one involved here, where the FTR establishes mandatory – not discretionary – rights and responsibilities of employees and agencies. The JTR, as an "interpretative rule," simply explains and supplements the FTR to the extent that it addresses matters determined in the latter regulation. It does not have the force of law and cannot alter an FTR determination. See National Organization of Veterans' Advocates, 260 F.3d at 1375; Paralyzed Veterans of America, 138 F.3d at 1436; Lorrie L. Wood. The JTR provision in question properly applies to programs which the FTR gives agencies the option of implementing or not implementing, such as contracting with relocation services companies and making home marketing incentive payments for the benefit of transferring employees. See 41 CFR 302-12.2, -12.101, -14.4, -14.102.

We note, incidentally, that DoD's Per Diem, Travel and Transportation Allowance Committee has approved for inclusion in the JTR, as of January 1, 2002, a provision for reimbursement of employees which mirrors the FTR's provision for payment of employees who arrange common carrier transportation on their own instead of using an available ticket office which is under contract to the agency. JTR C2007-D.1 (Jan. 1, 2002) (advance copy). Thus, very soon, the notation on Ms. Wood's and Mr. Rierson's orders regarding the implications of purchasing airline tickets outside the designated TMO will be inconsistent with not only the FTR, but also the JTR.

STEPHEN M. DANIELS
Board Judge